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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3898

11 **MICHAEL FRANCIS CRUZ**  
12 **242 Woodridge Drive**  
13 **Vallejo, CA 94591**

**A C C U S A T I O N**

14 **Pharmacy Technician License No. TCH 93333**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about September 5, 2009, the Board of Pharmacy issued Pharmacy Technician  
22 License No. TCH 93333 to Michael Francis Cruz (Respondent). The License was in full force  
23 and effect at all times relevant herein and will expire on January 31, 2013, unless renewed.

24 JURISDICTION

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
26 Consumer Affairs, under the authority of the following laws. All section references are to the  
27 Business and Professions Code (Code) unless otherwise indicated.

28 ///







1 a. An investigation of controlled substance/dangerous drug inventory and stock on  
2 hand by CVS auditors/investigators determined that between in or around April 2009 and March  
3 2010 the CVS Pharmacy by which Respondent was employed was short anywhere between 86.9  
4 and 88 pints of **Phenergan/Promethazine with Codeine** (stock bottle contains one pint).

5 b. On or about March 18, 2010 and March 19, 2010, Respondent was captured on  
6 store surveillance (videocamera) placing 5 or 6 pint bottles of **Phenergan/Promethazine with**  
7 **Codeine** on each occasion (a total of 10-12 pint bottles) into plastic bags, and handing those bags  
8 to the driver or passenger in an automobile at the pharmacy drive-through window. On neither  
9 occasion did Respondent receive or process a prescription for the medication(s).

10 c. Respondent subsequently admitted to having similarly dispensed/furnished pint  
11 bottles of **Phenergan/Promethazine with Codeine**, without prescription, on several occasions.  
12 He admitted to having dispensed/furnished at least twenty (20) pints in this fashion.

13 d. Respondent further admitted that in connection with his criminal case (see  
14 below) he paid restitution to CVS in an amount equal to 88 pints of **Promethazine with Codeine**.

15  
16 FIRST CAUSE FOR DISCIPLINE

17 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

18 21. Respondent is subject to discipline under section 4301(f) of the Code in that  
19 Respondent, as described in paragraphs 18 to 20 above, committed numerous acts involving  
20 moral turpitude, dishonesty, fraud, deceit, or corruption.

21  
22 SECOND CAUSE FOR DISCIPLINE

23 (Furnishing of Controlled Substance)

24 22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
25 4059 of the Code, and/or Health and Safety Code section 11158, in that Respondent, as described  
26 in paragraphs 18 to 20 above, furnished/dispensed without a valid prescription, and/or conspired  
27 to furnish/dispense, and/or assisted or abetted furnishing/dispensing of, a controlled substance.

1 THIRD CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
5 in paragraphs 18 to 20 above, possessed, conspired to possess, and/or assisted in or abetted  
6 possession of, a controlled substance, without a prescription.

7  
8 FOURTH CAUSE FOR DISCIPLINE

9 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

10 24. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
11 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
12 18 to 20 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
13 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

14  
15 FIFTH CAUSE FOR DISCIPLINE

16 (Conviction of Substantially Related Crime(s))

17 25. Respondent is subject to discipline under section 4301(l) and/or section 490 of the  
18 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of  
19 a substantially related crime, in that on or about July 15, 2010, in the criminal case *People v.*  
20 *Michael Francis Cruz*, Case No. VCR207210 in Solano County Superior Court, Respondent was  
21 convicted of violating Health and Safety Code section 11153, subdivision (a) (Unlawful  
22 Controlled Substance Prescription), a misdemeanor. The conviction was entered as follows:

23 a. On or about July 15, 2010, based on the conduct described in paragraphs 18 to  
24 20, Respondent was charged by Amended Felony Complaint in Case No. VCR207210 under (1)  
25 Penal Code section 487(a) (Grand Theft by Embezzlement), a felony, and (2) Health and Safety  
26 Code section 11153(a) (Unlawful Controlled Substance Prescription), a felony.

27 b. On or about July 15, 2010, Count 2 was amended from felony to misdemeanor.  
28 Respondent pleaded *nolo contendere* and was found guilty. Count 1 was dismissed.

1 c. On or about July 15, 2010, the Court noted that Respondent had paid restitution  
2 in full. Imposition of sentence was suspended in favor of a period of court probation of three (3)  
3 years, on terms and conditions including time served (1 day), and search conditions.  
4

5 SIXTH CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct)

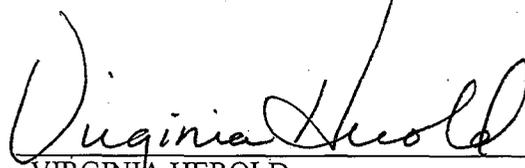
7 26. Respondent is subject to discipline under section 4301 of the Code in that  
8 Respondent, as described in paragraphs 18 to 25 above, engaged in unprofessional conduct.  
9

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
12 and that following the hearing, the Board of Pharmacy issue a decision:

- 13 1. Revoking or suspending Pharmacist Technician License Number TCH 93333, issued  
14 to Michael Francis Cruz (Respondent);  
15 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
16 enforcement of this case, pursuant to Business and Professions Code section 125.3;  
17 3. Taking such other and further action as is deemed necessary and proper.  
18

19 DATED: 4/5/11

  
20 VIRGINIA HEROLD  
21 Executive Officer  
22 Board of Pharmacy  
23 Department of Consumer Affairs  
24 State of California  
25 Complainant

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